

(i) The evidence was discovered after the trial,

(ii) The evidence is not such that it would have been discovered by the petitioner at the time of trial in the exercise of due diligence; and

(iii) The newly discovered evidence, if considered by a court-martial in the light of all other pertinent evidence, would probably produce a substantially more favorable result for the accused.

(2) No fraud on the court-martial warrants a new trial unless it had a substantial contributing effect on a finding of guilty or the sentence adjudged.

(f) *Action on the petition.* (1) The authority considering the petition may cause such additional investigation to be made and such additional information to be secured as that authority believes appropriate. Upon written request, and in his discretion, the authority considering the petition may permit oral argument on the matter.

(2) When a petition is considered by the Judge Advocate General, any hearing may be before the Judge Advocate General or before an officer or officers designated by the Judge Advocate General.

(3) If the Judge Advocate General believes meritorious grounds for relief under Article 74, Uniform Code of Military Justice have been established but that a new trial is not appropriate, the Judge Advocate General may act under article 74, Uniform Code of Military Justice, if authorized, or transmit the petition and related papers to the Secretary concerned with a recommendation.

(4) The Judge Advocate may also, in cases which have been finally reviewed but have not been reviewed by a Court of Military Review, act under article 69, Uniform Code of Military Justice.

[50 FR 23803, June 6, 1985]

§719.144 Application for relief under 10 U.S.C. 869, in cases which have been finally reviewed.

(a) *Statutory provisions.* 10 U.S.C. 869 provides in pertinent part, “The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, in whole or in part, by the Judge

Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.”

(b) *Time limitations.* In order to be considered by the Judge Advocate General, an application for relief must be placed in military channels if the applicant is on active duty, or be deposited in the mail if the applicant is no longer on active duty, on or before the last day of the two-year period beginning on the date the sentence is approved by the convening authority. An application not filed in compliance with these time limits may be considered if the Judge Advocate General determines, in his or her sole discretion, that “good cause” for failure to file within the time limits has been established by the applicant.

(c) *Submission procedures.* Applications for relief may be submitted to the Judge Advocate General by letter. If the accused is on active duty, the application shall be submitted via the applicant’s commanding officer, and the command that convened the court, and the command that reviewed the case under 10 U.S.C. 864(a) or (b). If the original record of trial is held by the command that reviewed the case under 10 U.S.C. 864(a) or (b), it shall be forwarded as an enclosure to the endorsement. If the original record of trial has been filed in the National Personnel Records Center, the endorsement will include all necessary retrieval data (accession number, box number, and shelf location) obtained from the receipt returned from the National Personnel Records Center to the sending activity. This endorsement shall also include information and specific comment on the grounds for relief asserted in the application, and an opinion on

Department of the Navy, DoD

§719.155

the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to the Judge Advocate General.

(d) *Contents of applications.* All applications for relief shall contain:

- (1) Full name of the applicant;
- (2) Social Security number and branch of service, if any;
- (3) Present grade if on active duty or retired, or “civilian” or “deceased” as applicable;
- (4) Address at time the application is forwarded;
- (5) Date of trial;
- (6) Place of trial;
- (7) Command title of the organization at which the court-martial was convened (convening authority);
- (8) Command title of the officer exercising review authority in accordance with 10 U.S.C. 864 over the applicant at the time of trial, if applicable;
- (9) Type of court-martial which convicted the applicant, and sentence adjudged;
- (10) General grounds for relief which must be one or more of the following:
 - (i) Newly discovered evidence;
 - (ii) Fraud on the court;
 - (iii) Lack of jurisdiction over the accused or the offense;
 - (iv) Error prejudicial to the substantial rights of the accused;
 - (v) Appropriateness of the sentence;
- (11) An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant’s contentions may be included, and the format used may take the form of a legal brief if the applicant so desires.);
- (12) Any other matter which the applicant desires to submit;
- (13) Relief requested; and
- (14) Facts and circumstances to establish “good cause” for a failure to file the application within the time limits prescribed in paragraph (b) of this section, if applicable; and
- (15) If the application is signed by a person other than the applicant pursuant to subsection e, an explanation of the circumstances rendering the applicant incapable of making application. The applicant’s copy of the record of trial will *not* be forwarded with the application for relief, unless specifically

requested by the Judge Advocate General.

(e) *Signatures on applications.* Unless incapable of making application, the applicant shall personally sign the application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by the applicant’s spouse, next of kin, executor, guardian or other person with a proper interest in the matter. In this regard, one is considered incapable of making application for purposes of this section when unable to sign the application under oath due to physical or mental incapacity.

[50 FR 23804, June 6, 1985]

§§ 719.145–719.150 [Reserved]

§719.151 **Furnishing of advice and counsel to accused placed in pre-trial confinement.**

The Department of the Navy Corrections Manual, SECNAVINST 1640.9, reiterates the requirement of Article 10, UCMJ, that, when a person is placed in pretrial confinement, immediate steps should be taken to inform the confinee of the specific wrong of which he is accused and try him or to dismiss the charges and release him. The Corrections Manual requires that this information normally will be provided within 48 hours along with advice as to the confinee’s right to consult with lawyer counsel and his right to prepare for trial. Lawyer counsel may be either a civilian lawyer provided by the confinee at his own expense or a military lawyer provided by the Government. If a confinee requests to confer with a military lawyer, such lawyer should normally be made available for consultation within 48 hours after the request is made.

[39 FR 18437, May 28, 1974]

§719.155 **Application under 10 U.S.C. 874(b) for the substitution of an administrative form of discharge for a punitive discharge or dismissal.**

(a) *Statutory provisions.* 10 U.S.C. 874(b) provides that the “Secretary